

# HOUSE . . . . . No. 200

---

## The Commonwealth of Massachusetts

PRESENTED BY:

**Michael J. Rodrigues**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to consumer protection.

PETITION OF:

NAME:

Michael J. Rodrigues

DISTRICT/ADDRESS:

8th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 179 OF 2007-2008.]

## The Commonwealth of Massachusetts

---

In the Year Two Thousand and Nine

---

### AN ACT RELATIVE TO CONSUMER PROTECTION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 94, section 184B, as so appearing, is hereby amended by inserting at the end thereof the  
2 following definition:

3 “Retail Store”, a store selling any item at retail including any businesses selling non-food items under other  
4 applicable Massachusetts law and regulations. A store which is not open to the general public but is reserved for use  
5 by its members shall come within the provisions of this definition unless the members must pay a direct fee to the  
6 store to qualify for membership and the store is not required to collect sales tax on transactions with members.  
7 Pursuant to this section a retail store shall not include any store which engages primarily in the sale of food for  
8 consumption on the premises or in a specialty trade.

9 Chapter 94, section 184C, as so appearing, is hereby amended by inserting the following words “, retail store” after  
10 the word “store” in line 2.

11 Chapter 94, section 184C, as so appearing, is hereby amended by striking subsection (10) in its entirety and  
12 replacing it with the following:

- 13 (10) Items that are located in end-aisle or other freestanding displays provided, however, that if offered for  
14 sale by a seller with an automatic checkout system they are coded, or if offered by a seller without such  
15 system they are on an easily referenced price list at each cash register, and provided, further, that such  
16 items are fully and accurately price marked at their regular shelf location, and the seller maintains a list  
17 of such items as required by section one hundred and eighty-four D.

18 Chapter 94, section 184C, as so appearing, is hereby amended by inserting at the end thereof the following sections:

- 19 (11) Unpackaged items sold by length or area, such as chain, rope, flooring, lumber or fabric on a bolt,  
20 with a clear and conspicuous "price per" marked on the bolt or at the point of display.

- 21 (12) Unpackaged items sold by weight or volume from a bulk container or source, such as stone or soil,  
22 with a clear and conspicuous "price per" marked on the container or at the point of display.

- 23 (13) Items that must be retrieved for the consumer by store staff, such as large electronics or appliances,  
24 where the display or representative items or items displayed in a locked case or out of reach of  
25 consumers.
- 26 (14) Packaged self-service items that are small in size and are offered for sale within five feet of the cash  
27 register, with a clear and conspicuous "price per" marked on the container or at the point of display.
- 28 (15) Unpackaged items which have a weight of not more than 3 ounces, and/or a price of not more than 75  
29 cents, with a clear and conspicuous "price per" marked on the container or at the point of display.
- 30 (16) Live animals and items sold in a coin operated vending machine, with a clear and conspicuous "price  
31 per" marked on the container or at the point of display.
- 32 (17) Items offered temporarily at an advertised reduced price.
- 33 (18) An additional 5% of items offered for sale, provided that a clear and conspicuous separate sign or a  
34 single sign in the case of similar items all priced the same, with the price no smaller than three eighths  
35 of an inch high, is placed at the point of display of each exempted sale item, identifying the item by its  
36 brand name and model number, if applicable, and SKU or UPC number; and further provided that the  
37 store maintains a current and accurate price list of all items exempted under this provision. The seller  
38 may maintain such a list in any reasonable manner, provided that information contained on the list can  
39 be referenced easily by the person requesting it. The seller shall make the list available at the service  
40 desk for public inspection. An SKU number may substitute for the UPC number if the SKU is marked  
41 on the item.
- 42 Chapter 94, section 184D, as so appearing, is hereby amended by inserting the following words "or retail stores"  
43 after the phrase "food stores or food departments" in lines 2, 43, and 49 in each instance.
- 44 Chapter 94, section 184D, as so appearing, is hereby amended by inserting the words "or retail store" after the  
45 phrase "food store and food department" in line 26.
- 46 Chapter 94, section 184E, as so appearing, is hereby amended by inserting the words "or retail store" after the  
47 phrase "food store and food department" in lines 3, 5, 23, 28, 33 and 51 in each instance.
- 48 Chapter 94, section 184E, as so appearing, is hereby amended by inserting the words "or retail stores" after the  
49 phrase "food stores and food departments" in line 49.
- 50 Chapter 94, section 184E, as so appearing, is hereby amended by inserting the words ", retail stores" after the words  
51 "food stores" in line 60.
- 52 Chapter 94, section 184E, as so appearing, is hereby amended by striking the second sentence of the first paragraph  
53 and replacing it with the following sentence:
- 54 "Notwithstanding the provision of any law or regulation to the contrary, violations of section 184C shall be punished  
55 for the first offense by a fine of \$200, for the second offense by a fine of \$500, and for a subsequent offense, by a  
56 fine of \$1,000."
- 57 Chapter 94, section 184E, as so appearing, is hereby amended by striking the third sentence of the first paragraph  
58 and replacing it with the following sentence:

“Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of said chapter 98 and notwithstanding the provision of any law or regulation to the contrary, a civil citation may be issued for not less than \$100 and not more than \$200 for each violation, up to a maximum of \$5,000 per inspection.”

Chapter 94, as so appearing, is hereby amended by inserting at the end thereof the following sections:

Section 329A.

(a) "Deputy Director" shall mean the Deputy Director of the division of standards.

(b) "Person" shall mean an individual, firm, partnership, association or corporation.

(c) "Division" shall mean the division of standards.

(d) "Computer-assisted check out system" shall mean any electronic device, computer system or machine which determines the selling price of any item interpreting its universal product code, any other code, or by any other use of a price look-up function.

(e) "Inspector" shall mean the Deputy Director or authorized agent to enforce the provisions of this chapter.

(f) "Item price" shall mean the lowest indicated price on a shelf tag, sign or advertisement.

(g) "Price look-up function" shall mean the capability of any checkout system to determine the retail price of an item electronically or by way of the manual entry into the system of a code number assigned to that particular unit by the retail store or by way of the checkout operator's consultation of a file maintained at the point of sale.

(h) "Retail store" shall mean a store selling any item at retail including food and non-food items. A store which is not open to the general public but is reserved for use by its members shall come within the provisions of this definition unless the members must pay a direct fee to the store to qualify for membership and the store is not required to collect sales tax on transactions with members. Pursuant to this section a retail store shall not include any store which engages primarily in the sale of food for consumption on the premises or in a specialty trade, which the Deputy Director determines, by regulation, would be inappropriate for item pricing.

(i) "Item" shall mean a specific and distinct product, good or commodity. One item is differentiated from another by having a different universal product code for items so coded, and for items not so coded, the item has any distinguishing characteristics compared to another item.

(j) "Electronic product coding" shall mean any system of coding which entails electronic pricing.

(k) "Self-service price check scanner" shall mean a device to be utilized by shoppers which reads the electronic or universal product code on a product, retrieves the correct price from the seller's automatic checkout system or computer, displays the correct price on a readout panel, and has either a grease pencil attached to the device for shoppers to use in marking the price on an item or an alternative method by which a shopper may record the price of an item. Such alternative method shall be subject to the approval of the Deputy Director.

(l) "Self-service price check scanner with printing capabilities" shall mean a device to be utilized by shoppers which reads the electronic or universal product code on a product, retrieves the correct price from the seller's automatic checkout system or computer, displays the correct price on a readout panel, and is capable of printing an adhesive price sticker with the correct price and product description.

Section 329B.

(a) No retail store shall charge a price for any item, which exceeds the lowest of any item, shelf, scanned, sale or advertised price of such item. In the event that the price charged exceeds the lowest price a store is permitted to charge for the item, the store will be subject to a penalty as described in this chapter and other applicable law at the discretion of the Deputy Director.

(b) In a store utilizing computerized laser scanning or other electronic assisted checkout system, the inspector shall be permitted to compare the item, shelf, sale, or advertised price of any item sold in the store with the programmed price.

(c) The Deputy Director shall establish a randomized store inspection procedure designed to eliminate any bias in selecting stores to be inspected for price auditing purposes. However, any retail store may be inspected at any time upon complaint or if the Deputy Director has sufficient cause to audit a particular store or stores to ensure pricing accuracy.

Section 329C.

(a) Every person, store, firm, partnership, corporation, or association which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in sections 184B through 184E, inclusive, of chapter 94, or other applicable Massachusetts law or regulation promulgated hereunder, may make an application in writing to the Deputy Director for a waiver of said item pricing requirement. A separate application shall be required for each store. An annual registration fee must be submitted with the initial application and subsequent renewal. The Deputy Director shall approve or reject the application within sixty days from the date of receiving the application. If the application is rejected, the application fee shall be returned. Pursuant to the regulations promulgated under this chapter, the Division will require that each applicant complete a "no job loss" affidavit stating the number of people employed at the time of the application process. After the filing of the affidavit, if there is any resulting job loss at the store due to the implementation of the waiver, not attributed to seasonal employment or verifiable economic pressures, the store will be required to item price pursuant to sections 184B through 184E, inclusive, of chapter 94, or other applicable Massachusetts law or regulation promulgated hereunder, and be subject to a fine of not more than five thousand dollars.

(b) The registration fee is based upon the number of cash registers in each store as set according to the following schedule and exemption:

i. Waiver Fee Cash Register Schedule:

One to four cash registers \$2,500

Five or more cash registers \$5,000

ii. An applicant shall be exempt from submitting the annual waiver fee if shown at the time of each application to be a retail store with an annual sales revenue equal to or less than \$5,000,000 of in-store sales, as verified by its most recent Massachusetts tax return. For a retail store with more than one location engaged in a unitary business, such sales volume shall be reported as the aggregate of all sales reported by all locations.

(c) Waiver applications and the required fee or acceptable proof of fee exemption must be received at the division by October 1, 2005, and annually thereafter. Stores that fail to comply with the required registration, do not renew an application, or fail to pay the annual renewal fee will be subject to the item pricing requirements and violations pursuant to sections 184B through 184E, inclusive, of chapter 94, or other applicable Massachusetts law.

(d) A waiver from item pricing shall be valid for a period of one year from the date of issuance. Stores must reapply annually for renewal of waiver at the rates and procedures established in section 329C(b).

(e) Systems approved by the Deputy Director must have means to provide an audit trail regarding item price changes that can be accessed by state enforcement agents upon request. All food and grocery item prices once entered into the store's electronic pricing system shall remain unchanged for a minimum of seventy-two hours, unless the price is to be reduced or is the result of a gross pricing error as defined in chapter 94, section 184B.

(f) Any registered retail store that fails to meet the stated price accuracy standard of 98 per cent, not including any under charges, based on the price accuracy inspection procedure adopted by the Division shall be re-inspected after thirty days of the failed inspection. If the store fails upon re-inspection to meet the price accuracy standard, the registration of such store may be suspended for a period of six months. During the suspension period, the store will be required to individually item price every item offered for sale pursuant to sections 184B through 184E, inclusive, of chapter 94, or other applicable Massachusetts law. After payment of fifty percent of the original application fee as provided for in section 329C(b), the store can request the Division in writing to be re-inspected. If the store after re-inspection meets the price accuracy standard, the registration may be re-instated.

(g) As a condition of the waiver from item pricing pursuant to this section, each retail store which accepts a waiver must agree to meet the following requirements:

- i. The store shall designate and make available self-service price check scanners to enable consumers to confirm the price of an item. Stores that are arranged in an aisle format shall have one self-service price check scanner located on one end of every other aisle in those areas exempted under the waiver. Stores that are arranged in a format other than in aisles shall have one self-service price check scanner per five thousand square feet in those areas exempted under the waiver. Stores that are arranged in a combination of aisles and other formats shall have a number of self-service price check scanners that is within the discretion of the Deputy Director. All stores shall have at least two self-service price check scanners. At least one of the self-service price check scanners shall have printing capabilities. These self-service price check scanners shall be strategically located in locations convenient to consumers with signs of sufficient sized lettering identifying these units to consumers. Stores will submit their proposed sign and device locations in a schematic diagram to the Deputy Director for approval with the waiver application.
- ii. The store shall place a clear and conspicuous separate sign, shelf tag or unit price tag for the item, or a single sign in the case of similar items all priced the same, with the price no smaller than three eighths of an inch high, at the point of display of each such item, disclosing the price or discount of such item and information sufficient to identify the item which may include the brand name, model number if applicable, or electronic product code.
- iii. Each registrant shall verify the accuracy of all sale prices in the store's electronic processing system prior to the start of any sale. Each registrant shall either assign an employee to check all sale prices in the store's electronic pricing system prior to the start of any sale and maintain a sale price log including the following: name of the store employee, date the employee performed the pre-sale price accuracy audit, and the signature of the employee; or establish a reasonable process to verify the accuracy of all sale prices prior to the start of any sale subject to guidelines established by the Deputy Director. Failure to establish such a process or make that process available upon request by any authorized agent of the Deputy Director may be cause for registration suspension.
- iv. The store shall not charge any customer a price for any item, which exceeds the item, shelf, sale or advertised price.
- v. The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers, guaranteeing the consumer the item free if it costs less than \$10 or \$10 off the item if the item costs more than \$10. The price accuracy guarantee must be conspicuously posted at each cash register and at each self-service price check scanner.
- vi. If an item rings up higher than the lowest advertised price, the store will be subject to a fine of no more than \$200.
- vii. If a store fails to post the required item price sign at the point of display, the store will be subject to a fine of not more than \$100 per item. However, if the item, which was a result of the failure to post a required item price sign at the point of display, rings up at a price higher than the lowest price charged for that item during the previous thirty days, the fine will be increased to no more than \$200.
- viii. For items that cannot easily be carried to an electronic scanner because of their size or weight, the seller must provide a scannable card or other device at the point of display of the item, so that a consumer can take the card or device to the self-service price check scanner.
- ix. Each registrant shall make available to customers written information explaining the item pricing waiver and use of self-service price check scanners. Stores shall submit their proposed written information to the Deputy Director for approval with the waiver application.
- (h) In no event shall a single act or violation of sections 329A through D inclusive, or 184B through E inclusive or section 56D of Chapter 98 result in the imposition of multiple fines or penalties.

192 (i) The Deputy Director, in his discretion, may revoke a waiver from item pricing for cause including but not  
193 limited to any of the following reasons:

194 i. Failure to comply with any provisions of this chapter;

195 ii. Deliberate overcharging of any consumer; or

196 iii. Material misrepresentation in the application for a waiver.

197 Section 329D.

198 (a) The provisions of this chapter shall be enforced by the division. Upon representation of appropriate credentials,  
199 the division's inspectors and agents shall have the right to enter upon the premises of any retail store to make an  
200 inspection and to determine compliance with the provisions of this chapter.

201 (b) For the purpose of determining a store's compliance with the requirement to disclose the item price to the  
202 consumer, an inspection shall be conducted of a sample of no less than twenty-five items.

203 (c) No item shall be cited more than once in a forty-eight hour period for not disclosing the item price to the  
204 consumer.

205 (d) For any inspection under section 329B, the store representative shall afford the inspector access to the test  
206 mode of the checkout system in use at that store or to a comparable function of said system and to the retail price  
207 information contained in a price look-up function.

208 (e) The inspector shall have the authority to issue a stop sale order with respect to any item being used, handled,  
209 or offered for sale in violation of section 329B and for not disclosing the item price to the consumer. Any such  
210 order shall be in writing and direct that the item shall be removed for sale pending price correction.

211 (f) The division shall retain up to ten percent of all registration fees and fines collected not to exceed \$2,000,000  
212 annually. The retained revenue collected may be used by the division to support its enforcement activities and for  
213 grants to approved agents to assist the division in the enforcement of the provisions of this law. Any revenue  
214 generated on an annual basis over this amount shall revert to the General Fund.

215 (g) A hearing may be requested in writing on any fineable violation or registration suspension issued by the  
216 division. The division's designated hearing officer will conduct the hearing. The division's designated hearing  
217 officer shall make a written determination. Such determination may be appealed to the Deputy Director who, after  
218 due deliberation, shall issue an order accepting, modifying, or rejecting the hearing officer's determination. If the  
219 grounds for appeal are determined to be without reasonable basis, the fine shall be doubled.